



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL MNDCL-S MNRL-S OPR

Introduction

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

- 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;
- an Order of Possession for non-payment of rent pursuant to section 55;
- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement in the amount of \$3,300.00 pursuant to section 67;
- 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 left the teleconference hearing connection open until 11:10 am in order to enable the tenant to call into this teleconference hearing scheduled for 11:00 am. The landlord's agent 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's agent and I were the only ones who had called into this teleconference.

The landlord's agent testified that the tenant was served the notice of dispute resolution form and supporting evidence package via registered mail on February 4, 2019. The landlord's agent provided a Canada Post tracking number confirming this mailing which is reproduced on the cover of this decision. I find that the tenant was deemed served with this package on February 9, 2019, five days after the landlord's agent mailed it, in accordance with sections 88, 89 and 90 of the Act.

Preliminary Matter – Landlord Abandoning Portion of Claim

At the outset of the claim the landlord's agent advised me that the landlord was abandoning its claim for:

- an order of possession;
- compensation for unpaid rent owed for February 2019 in the amount of \$1,100.00; and
- for compensation for loss of revenue for the March 2019 in the amount of \$1,100.00.

The landlord's agent advised me that only portions of the claim the landlord is pursuing is for compensation for unpaid rent owed for January 2019 (in the amount of \$1,100.00) and for the filing fees.

Accordingly, I order that the following of the landlord's claims are dismissed without leave to reapply:

- an order of possession;
- for compensation for unpaid rent owed for February 2019 in the amount of \$1,100.00; and
- for compensation for loss of revenue for the March 2019 in the amount of \$1,100.00.

Issue(s) to be Decided

Is the landlord entitled to:

- A monetary order for unpaid rent in the amount of \$1,100.00 representing compensation for unpaid rent for January 2019?
- Apply the security deposit against any monetary order made at this hearing?
- Recover his filing fee?

Background and Evidence

While I have considered the documentary evidence and the testimony of the landlord, not all details of their 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's agent testified that:

- The parties entered into an oral tenancy agreement starting June 1, 2018. Monthly rent is \$1,100.00 and is payable on the first of each month. The tenant

paid the landlord a security deposit of \$500.00. The landlord still retains this deposit.

- The tenant did not pay rent for the month of January 2019 in the amount of \$1,100.00.
- The landlord issued a 10 Day Notice to End Tenancy (the “**Notice**”) dated January 15, 2019 for \$1,150.00 in unpaid rent due on January 1, 2019. The Notice has an effective date on January 25, 2019. The landlord’s agent entered a copy of the Notice into evidence.
- The Notice was served on the tenant by posting it to the door of the rental unit on January 15, 2019.
- The tenant has, at some point after the Notice was posted on the door, vacated the rental unit.

Analysis

I have reviewed all documentary evidence provided by the landlord. Section 90 of the Act provides that because the Notice was served by posting the Notice to the door of the rental unit, the tenant is deemed to have received the Notice three days after its posting. In accordance with sections 88 and 90 of the Act, I find that the tenant is deemed to have received the Notice on January 18, 2019, [date]three days after its posting.

Based on the testimony of the landlord’s agent, I find that the tenant was obligated to pay monthly rent in the amount of \$1,110.00. Section 26 of the Act requires that a tenant pay rent when it is due under the tenancy agreement. I accept the evidence before me that the tenant has failed to pay rental arrears in the amount of \$1,100.00, comprised of the balance of unpaid rent owed by January 1, 2019.

Section 7 of the Act states:

Liability for not complying with this Act or a tenancy agreement

- 7** (1)If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

Therefore, I find that the landlord is entitled to a monetary order of \$1,100.00 for unpaid rent owed by January 1, 2019 as claimed by the landlord.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application.

Pursuant to section 72(2) of the Act, I find the landlord is entitled to retain the security deposit of \$500.00 in partial satisfaction of the amount owed for unpaid rent by the tenant.

Conclusion

I order that the tenant pay the landlord \$700.00, representing the following:

Outstanding rent for January 2019	\$1,100.00
Credit for retaining security deposit	-\$500.00
Filing Fee	\$100.00
Total	\$700.00

Should the tenant fail to comply with this order, this order may be filed in, and enforced as an order of, the Small Claims Division of the Provincial 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: March 19, 2019

Residential Tenancy Branch