



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD MNRL FFL

Introduction

This hearing dealt with applications from both the landlord and the tenant under the *Residential Tenancy Act* (the *Act*).

The landlord applied for:

- a monetary order for compensation for unpaid rent pursuant to section 67;
- authorization to retain the security and pet damage deposit for this tenancy pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- a return of all or part of the security and pet damage deposit for this tenancy pursuant to section 38.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord confirmed receipt of the tenant's application and evidence. Based on the testimony I find that the landlord was served with the tenant's application package in accordance with sections 88 and 89 of the *Act*.

The landlord testified that they served the tenant with their application of November 17, 2018 and evidentiary materials by registered mail to an address provided by the tenant on or about November 20, 2018. The landlord provided the Canada Post tracking number as evidence of service. The landlord gave evidence that the materials were

returned to the landlord as the tenant refused to accept the registered mail. The tenant disputed receiving the landlord's application package.

In accordance with section 89 of the Act, mailing a copy of the application by registered mail to the tenant's address is an acceptable method of service. While the tenant disputes receiving the landlord's application and materials, they were unable to provide a cogent reason why registered mail sent to an address they provided could not be delivered.

Residential Tenancy Policy Guideline 12 sets out that:

Where a document is served by Registered Mail, the refusal of the party to accept or pick up the Registered Mail, does not override the deeming provision. Where the Registered Mail is refused or deliberately not picked up, receipt continues to be deemed to have occurred on the fifth day after mailing.

Therefore, in accordance with sections 88, 89 and 90 of the Act, I find that the tenant is deemed to have been served with the landlord's application and materials on November 25, 2018, five days after mailing.

Issue(s) to be Decided

Is the landlord entitled to a monetary award as claimed?

Is either party entitled to the security and pet damage deposit?

Is the landlord entitled to recover the filing fee from the tenant?

Background and Evidence

The parties agreed on the following facts. This tenancy originally began in September, 2018. The monthly rent was \$800.00 payable on the first of each month. A security deposit of \$400.00 and pet damage deposit of \$200.00 was paid at the start of the tenancy. The landlord purchased the rental property and assumed the tenancy in October, 2018. On October 30, 2018, the date the landlord took possession of the property, the tenant moved out of the rental unit. The tenant had some discussions with the previous landlord but had not provided written notice to end the tenancy. The tenant did not pay rent for November, 2018. The tenant did not give authorization that the landlord may retain the deposits for this tenancy and provided a forwarding address on November 9, 2018 requesting the return of the deposits.

Analysis

Section 38 of the *Act* requires the landlord to either return the tenant's security and pet damage deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or receiving a forwarding address in writing.

In the matter at hand I accept the evidence of the parties that the tenant provided a forwarding address by email dated November 9, 2018 and that the landlord filed their application for dispute resolution on November 17, 2018, within the 15 days provided under the *Act*.

A tenant must pay rent when it is due pursuant to section 26(1) of the *Act*. Section 45 of the *Act* explains that a tenant may end a periodic tenancy by giving the landlord notice on a date not earlier than one month after the date the landlord receives the notice.

I accept the evidence of the parties that no written notice to end this tenancy was ever exchanged. The tenant simply took it upon themselves to vacate the rental unit for the end of October, 2018. While I accept that the tenant may have engaged in some conversations about the tenancy with the previous landlord, in the absence of a written notice ending the tenancy I find that there was no requirement that the tenant vacate. Therefore, I find that the tenant was responsible for paying the full rent for November, 2018 in the amount of \$800.00 by November 1, 2018. I accept the evidence of the parties that the tenants failed to pay the full rent on that date.

Section 67 of the *Act* states, if damage or loss results from a party not complying with this *Act*, the regulations or a *tenancy agreement*, the director may determine the amount of, and order that party to pay, compensation to the other party. I find that a violation of the tenancy agreement occurred by the tenant who failed to pay the full rent owing on November 1, 2018. Therefore, the landlord is entitled to a monetary award in the amount of \$800.00, the equivalent of one month's rent. I issue a monetary award in that amount.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain the tenant's \$400.00 security deposit and \$200.00 pet damage deposit in partial satisfaction of the monetary award issued in the landlord's favour.

As the landlord was successful in their application the landlord is also entitled to recover the \$100.00 filing fee for this application from the tenant.

Conclusion

The landlord is authorized to retain the security deposit of \$400.00 and pet damage deposit of \$200.00 for this tenancy.

I issue a monetary award in the landlord's favour in the amount of \$300.00 as against the tenant on the following terms:

Item	Amount
Unpaid Rent	\$800.00
Less Security Deposit	-\$400.00
Less Pet Damage Deposit	-\$200.00
Recovery of Filing Fee for this Application	\$100.00
Total Monetary Order	\$300.00

The landlord is provided with these Orders 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: March 22, 2019

Residential Tenancy Branch