



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, MNRL-S

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on July 04, 2019 (the "Application"). The Landlord sought to recover unpaid rent, to keep the security and pet damage deposits and reimbursement for the filing fee.

The Landlord appeared at the hearing. Nobody attended the hearing for the Tenant. I explained the hearing process to the Landlord who did not have questions when asked. The Landlord provided affirmed testimony.

The Landlord submitted evidence prior to the hearing. The Tenant did not. I addressed service of the hearing package and Landlord's evidence.

The Landlord testified that the hearing package and evidence were sent to the Tenant by Xpresspost July 10, 2019. The Landlord testified that the package was sent to the rental unit as the Tenant was still living in the rental unit at the time. The Landlord provided Tracking Number 1. I looked this up on the Canada Post website which shows the package was sent July 18, 2019. It shows notice cards were left July 22, 2019 and July 27, 2019. It shows the package was unclaimed and returned to the sender.

Based on the undisputed testimony of the Landlord and Canada Post website information, I find the Tenant was served with the hearing package and evidence in accordance with sections 88(c) and 89(1)(c) of the *Residential Tenancy Act* (the "Act"). The Tenant cannot avoid service by failing to pick up the package. The Tenant is deemed to have received the package July 23, 2019 pursuant to section 90(a) of the *Act*. I find the package was served in sufficient time for the Tenant to prepare for, and appear at, the hearing.

As I was satisfied of service, I proceeded with the hearing in the absence of the Tenant. The Landlord was given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered all documentary evidence and oral testimony of the Landlord. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Landlord entitled to recover unpaid rent?
2. Is the Landlord entitled to keep the security and pet damage deposits?
3. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

A written tenancy agreement was submitted as evidence. The tenancy started March 01, 2019 and was for a fixed term ending March 31, 2020. Rent was \$1,550.00 per month due by the first day of each month. The Tenant paid a \$775.00 security deposit and \$775.00 pet damage deposit. The agreement is signed by the Landlord and Tenant.

The Landlord testified that the tenancy ended August 18, 2019. The Landlord confirmed he still holds the \$775.00 security deposit and \$775.00 pet damage deposit.

The Landlord testified that the Tenant never provided him with a forwarding address in writing.

The Landlord testified as follows. The Tenant paid March rent in full. In April, the Tenant only paid \$1,200.00 in rent. The Tenant did not pay any rent from May to August. He gave the Tenant a notice to move out and the Tenant did move out in August.

The Landlord confirmed he is seeking unpaid rent for the 18 days the Tenant lived in the rental unit in August.

The Landlord testified that the Tenant did not have authority under the *Act* to withhold rent.

The Landlord confirmed \$5,900.00 in rent is currently outstanding. The Landlord sought to amend the Application to request the full amount.

The Landlord submitted a screen shot of an e-transfer showing the Tenant paid him \$1,200.00. This is not dated but shows an expiry date of May 01, 2019.

Analysis

Section 7 of the *Act* states that, if a tenant does not comply with the *Act*, regulations or their tenancy agreement, the non-complying tenant must compensate the landlord for loss that results.

Section 26(1) of the *Act* requires a tenant to pay rent in accordance with the tenancy agreement unless they have a right to withhold rent under the *Act*.

Based on the undisputed testimony of the Landlord and written tenancy agreement, I find the Tenant was obligated to pay \$1,550.00 in rent per month by the first day of each month.

Based on the undisputed testimony of the Landlord and in part on the screen shot of the e-transfer, I find the Tenant failed to pay the following rent amounts:

- \$350.00 for April
- \$1,550.00 for May
- \$1,550.00 for June
- \$1,550.00 for July
- \$900.00 for August ($\$1,550.00 / 31 \text{ days} = \$50.00 \text{ per day} \times 18 \text{ days} = \900.00)

I find the Tenant failed to pay \$5,900.00 in rent to the Landlord. I amend the Application to reflect this amount pursuant to rule 4.2 of the Rules of Procedure.

Based on the undisputed testimony of the Landlord, I find the Tenant did not have authority under the *Act* to withhold rent. I have no evidence before me that he did.

Pursuant to section 26(1) of the *Act* and the tenancy agreement, the Tenant was required to pay \$1,550.00 in rent by the first of each month. The Tenant failed to do so despite residing in the rental unit until August 18, 2019. The Tenant failed to comply with section 26(1) of the *Act* and the tenancy agreement. The Landlord is entitled to recover \$5,900.00 in rent.

In relation to the security and pet damage deposits, sections 38 and 39 of the *Act* state:

38 (1) Except as provided in subsection (3) or (4) (a), 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...any security deposit or pet damage deposit to the tenant...

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit...

39 Despite any other provision of this Act, if a tenant does not give a landlord a forwarding address in writing within one year after the end of the tenancy,

(a) the landlord may keep the security deposit or the pet damage deposit, or both, and

(b) the right of the tenant to the return of the security deposit or pet damage deposit is extinguished.

[emphasis added]

Based on the undisputed testimony of the Landlord, I find the Tenant has not provided the Landlord with his forwarding address in writing. Therefore, section 38 of the *Act* has not been triggered. The Landlord can keep the security and pet damage deposits towards unpaid rent pursuant to section 72(2)(b) of the *Act*.

As the Landlord was successful in this application, I award the Landlord \$100.00 as reimbursement for the filing fee pursuant to section 72(1) of the *Act*.

In total, the Tenant must pay the Landlord \$6,000.00. The Landlord can keep the \$775.00 security deposit and \$775.00 pet damage deposit. Pursuant to section 67 of the *Act*, I issue the Landlord a Monetary Order for the remaining \$4,450.00.

Conclusion

The Landlord is entitled to monetary compensation in the amount of \$6,000.00. The Landlord can keep the \$775.00 security deposit and \$775.00 pet damage deposit. The Landlord is issued a Monetary Order for the remaining \$4,450.00. This Order must be served on the Tenant and, if the Tenant does not comply with the Order, it may be filed in the Provincial Court (Small Claims) 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 *Act*.

Dated: November 01, 2019

Residential Tenancy Branch