



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL -S; FFL; MNDCT

Introduction

This hearing was set to deal with monetary cross applications. The landlord applied for a Monetary Order for unpaid rent and authorization to retain the tenant's security deposit. The tenant applied for compensation for damages or loss under the Act, regulations or tenancy agreement. Both parties appeared or were represented at the hearing and had the opportunity to be make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

Preliminary and Procedural Matters

At the outset of the hearing, I confirmed service of the hearing documents upon each other. The landlord testified that he sent his proceeding package and evidence to the tenant via registered mail on October 21, 2019 and the tenant confirmed receipt of the package. The tenant sent her proceeding package to the landlord via registered mail on January 17, 2020 and an 86 page package of evidence was sent to the landlord via registered mail on February 4, 2020. The landlord confirmed receiving the tenant's documents.

The landlord testified that he did not serve the tenant with any rebuttal evidence to her claims against him. The tenant testified that she did receive a response from the landlord. The person observing the proceeding with the tenant stated that she received emails from the landlord with respect to the tenant's claims.

Section 59(2)(b) of the Act requires that an applicant "include full particulars of the dispute that is to be the subject of the dispute resolution proceedings" with the Application for Dispute Resolution. This requirement is in keeping with the principles of natural justice and is intended to put the respondent on notice as the claim(s) against them and the opportunity to prepare and provide a response to the claim(s).

Section 59(5)(c) provides that the Director may refuse to accept an application where “the application does not comply with subsection (2)”.

I noted that the tenant made a claim of \$22,398.00 against the landlord and that in the details of dispute she provided a detailed calculation in support of the amount claimed; however, the basis for claims were vague and non-specific. To illustrate: the tenant wrote three sentences in the details of dispute whereby she indicated she was seeking a rent abatement of 50% of her monthly rent for the one year for loss of quiet enjoyment, plus aggravated damages of \$10,000.00 due to the conduct of the landlord. The tenant did not specify the activity or conduct that occurred that lead her to allege breach of quiet enjoyment or a basis for seeking aggravated damages. I confirmed with the tenant that she did not prepare a more detailed written submission. Rather, the tenant pointed to her evidence package as providing the basis for her claims. The evidence package was not provided with the Application for Dispute Resolution and I do not see a summary of events or arguments that set out the basis the tenant’s conclusions. As I informed the tenant, it is not upon the respondent or the Arbitrator to wade through a large evidence package and try to anticipate the basis for the applicant’s position. Then the tenant stated that she intended to set out the basis for her claims by way of her testimony during the hearing.

I find the tenant failed to provide the full particulars as to the nature of her claims with the Application for Dispute Resolution and her intention to set that out during the hearing would be prejudicial to the landlord since he would not have time to prepare a response.

The tenant stated that she has a valid claim that she intends to pursue but that she is a layperson and she now recognizes that she was remiss in sufficiently setting out the basis for her claim. The tenant requested her claim be withdrawn, without prejudice. The landlord was not agreeable to the tenant being given leave to reapply as the tenant’s claim have caused him stress, time and money in attempting to respond to her claims.

In consideration the tenant takes the position she has a valid claim that ought to be heard; that the tenant prepared an organized evidence package but was remiss in sufficiently setting out the basis for her claim at the time of filing; I find the tenant’s request for dismissal, with leave to reapply, to be within reason. Also of consideration is that the landlord testified that he did not serve the tenant with a response to her claims, which leads me to find the landlord would not be unduly prejudiced by dismissing the

tenant's application with leave to reapply. Therefore, I grant the tenant's request and the tenant's claims against the landlord are dismissed with leave to reapply.

Issue(s) to be Decided

1. Is the landlord entitled to a Monetary Order for unpaid rent?
2. Is the landlord authorized to retain the tenant's security deposit?
3. Award of the filing fee.

Background and Evidence

It was undisputed that the tenancy agreement started on September 1, 2018, requiring the tenant to pay rent of \$1,733.00 on the first day of every month, and the tenant paid a security deposit of \$866.50.

On July 30, 2019, the parties executed a mutual agreement to end tenancy with an effective date of September 30, 2019.

The tenant did not pay rent for September 2019 when due. The tenant acknowledges that she owes rent of \$1,733.00 to the landlord for September 2019 rent.

The landlord seeks to retain the tenant's security deposit of \$688.50 in partial satisfaction of the unpaid rent. The tenant did not object to that request.

The landlord recognized that after the tenancy ended he has determined that he owes the tenant \$305.55 plus \$378.00 for utilities that were in the tenant's name but that utilities were used, in part, by another rental unit on the property. The landlord was prepared to deduct the amount owed for utilities against the unpaid rent. The tenant concurred with this approach and the amounts put forth by the landlord.

In summary, the landlord seeks a Monetary Order for the net amount of \$182.50 after deducting the security deposit and applying the credit for utilities; plus, recovery of the filing fee.

The tenant was not agreeable to paying the full amount of the filing fee to the landlord and proposed they split the cost. The landlord was not agreeable to limiting his recovery to 50% since he expected the tenant would pay the amount owed and it still remains outstanding.

Analysis

Under section 26 of the Act, a tenant is required to pay rent when due under the tenancy agreement, even if the landlord violates the Act, regulations or tenancy agreement, unless the tenant has a legal right under the Act to withhold rent.

There are very limited and specific circumstances when a tenant may legally withhold rent and, in this case, there was no suggestion put forth that the tenant had a legal right to withhold rent. Rather, the tenant acknowledged that she owed the rent to the landlord. Therefore, I find the landlord entitled to recover \$1,733.00 for unpaid rent for September 2019.

I authorize the landlord to retain the tenant's security deposit in partial satisfaction of the unpaid rent.

I further recognize the parties' agreement that the tenant should be given credit for utilities and I take that agreement into account in calculating the Monetary Order provided to the landlord.

As for the filing fee, section 72 of the Act provides me the discretion to award a party recovery of a filing fee. I find the landlord's claim to be meritorious and I award the landlord recovery of the full amount of the filing fee, or \$100.00.

In keeping with all of the above, I provide the landlord with a Monetary Order to serve and enforce upon the tenant, as calculated below:

Unpaid rent – September 2019	\$1,733.00
Less: security deposit	(866.50)
Less: utilities owed to tenant (305.55 + 378.00)	(683.55)
Plus: recovery of filing fee	<u>100.00</u>
Monetary Order for landlord	\$ 282.95

Conclusion

The landlord is authorized to retain the tenant's security deposit and is provided a Monetary Order for the balance of \$282.95 to serve and enforce upon the tenant.

The tenant's claims against the landlord were not sufficiently set out and I dismissed her claim(s) with leave to reapply.

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: February 25, 2020

Residential Tenancy Branch