



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PEMBERTON HOLMES LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL-S, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act") for a monetary order for rent and/or utilities for the Landlord in the amount of \$2,690.00, retaining the security and pet damage deposits to apply to this claim; and to recover the \$100.00 cost of their Application filing fee.

An agent for the Landlord, M.R. ("Agent"), appeared at the teleconference hearing and gave affirmed testimony. No one attended on behalf of the Tenant. The teleconference phone line remained open for over ten minutes and was monitored throughout this time. The only person to call into the hearing was the Agent, who indicated that she was ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only person on the call, besides me, was the Agent.

I explained the hearing process to the Agent and gave her an opportunity to ask questions about the hearing process. During the hearing the Agent was given the opportunity to provide her evidence orally and to respond to my questions. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules") ; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

As the Tenant did not attend the hearing, I considered service of the Notice of Dispute Resolution Hearing. Section 59 of the Act states that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Agent testified that she served the Tenant with the Notice of Hearing documents by Canada Post registered mail, sent on November 11, 2019. The Agent provided a Canada Post tracking number in her submissions, as evidence of service. I find that the Tenant was deemed served with the Notice of Hearing documents in accordance with the Act. I,

therefore, admitted the Application and evidentiary documents, and I continued to hear from the Agent in the absence of the Tenant.

Preliminary and Procedural Matters

The Agent provided her email address within her submissions and provided the Tenant's forwarding address in the hearing. The Agent confirmed her understanding that the Decision would be emailed to her and mailed to the Tenant, and any Orders would be sent to the appropriate Party.

Issue(s) to be Decided

- Is the Landlord entitled to a monetary order, and if so, in what amount?
- Is the Landlord entitled to recovery of the Application filing fee?

Background and Evidence

The Agent said that the tenancy started in September 2018 and that the monthly rent was \$1,320.00, due on the first of each month. The Agent confirmed that the Tenant had paid the Landlord a security deposit of \$647.50 and a pet damage deposit of \$647.50. The Agent said that the Landlord still holds the deposits. The Agent said that the Tenant moved out of the rental unit on October 31, 2019, and gave the Landlord her forwarding address on November 1, 2019. The Landlord filed for dispute resolution on November 5, 2019, claiming against the deposits.

The Agent provided documentary evidence indicating that the Tenant was late paying her rent for more than each of the six months prior to vacating the rental unit. Further, the Agent said that the Tenant did not pay any rent for October 2019 and November 2019.

The Agent submitted a copy of a One Month Notice to End Tenancy for Cause signed and dated October 8, 2019 ("One Month Notice"), which was served by posting it on the rental unit door on October 8, 2019. The One Month Notice had an effective vacancy date of November 30, 2019. The ground for the One Month Notice was "Tenant is repeatedly late paying rent."

In clause six of the tenancy agreement, it states: "Rent must be received by the landlord on or before the first calendar day of each month, unless the parties agree In advance In writing to a different date."

The Agent also pointed out clause 10 of the tenancy agreement, which states:

...Late payment, returned or non-sufficient funds (N.S.F.) cheques are subject to an administrative fee of not more than \$25.00 each, plus the amount of any service fees charged by a financial institution to the landlord.

The Agent said the Tenant's cheques for October and November 2019 rent were returned as having insufficient funds ("NSF"); therefore, the Agent said that the Tenant owes the Landlord \$1,320.00 in unpaid rent, plus a \$25.00 administrative fee for the NSF cheques for each of October and November 2019.

The Agent said the total she is claiming from the Tenant on behalf of the Landlord is as follows:

	For	Authorization	Amount
1	Unpaid rent October	Clause 6 of tenancy agreement	\$1,320.00
2	NSF fee	Clause 10 of tenancy agreement	\$ 25.00
3	Unpaid rent November	Clause 6 of tenancy agreement	\$1,320.00
4	NSF fee	Clause 10 of tenancy agreement	\$ 25.00
		Total monetary order claim	\$2,690.00

The Agent said that the Tenant did not pay anything toward the October and November 2019 rent due.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Section 26 of the Act sets out that a tenant must pay rent when it is due:

Rules about payment and non-payment of rent

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Section 47 of the Act authorizes a landlord to end a tenancy for repeated late payment of rent:

Landlord's notice: cause

47 (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

. . .

(b) the tenant is repeatedly late paying rent;

Policy Guideline 38 explains that, absent any exceptional circumstances (such as a bank error through no fault of the tenant), three instances of late payment of rent are the minimum number of instances of late payments required to support this type of Notice to End Tenancy.

In this case, I find that the Tenant was not only late paying more than six times, but that she failed to pay any rent for October 2019 and November 2019. Pursuant to section 26 of the Act, I award the Landlord recovery of **\$2,640.00** of the unpaid rent for October and November 2019.

In terms of the Landlord's NSF fee, the *Residential Tenancy Act* Regulation sets out the allowable fees that a landlord can charge:

Non-refundable fees charged by landlord

7 (1) A landlord may charge any of the following non-refundable fees:

. . .

(d) subject to subsection (2), an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent;

. . .

(2) A landlord must not charge the fee described in paragraph (1) (d) or (e) unless the tenancy agreement provides for that fee.

Accordingly, I find that the Landlord's \$25.00 fee for the Tenant having provided NSF cheques for October and November 2019 rent is authorized by section 7 of the Regulation, and I award the Landlord with **\$50.00** from the Tenant in this regard. I award the Landlord with recovery of a total of \$2,690.00 from the Tenant, pursuant to section 67 of the Act. I also award the Landlord recovery of the \$100.00 Application filing fee from the Tenant for a total award of **\$2,790.00**.

Summary and Set off

I find that this claim meets the criteria under section 72(2)(b) of the Act to be offset against the Tenant's security and pet damage deposits of \$1,295.00, in partial satisfaction of the Landlord's monetary award. I authorize the Landlord to retain \$1,295.00 of the Tenant's deposits in partial satisfaction of this claim. I award the Landlord a Monetary Order of **\$1,495.00** against the Tenant for the remainder of the amount awarded to the Landlord, pursuant to sections 67 and 72 of the Act.

Conclusion

The Landlord is successful in their Application for compensation from the Tenant, as I found that the Tenant failed to pay rent owing to the Landlord in October and November 2019. The Landlord is awarded \$2,640.00 in unpaid rent, \$50.00 in fees for providing the Landlord with NSF cheques for October and November 2019 rent, and \$100.00 in recovery of the Application filing fee.

I authorize the Landlord to retain the Tenant's security and pet damage deposits, which total \$1,295.00, in partial satisfaction of this award. I grant the Landlord a Monetary Order under section 67 of the Act for **\$1,495.00** from the Tenant for the remainder of the monetary award.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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 23, 2020

Residential Tenancy Branch