



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR MNSD FF

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. A participatory hearing was held on April 3, 2020. The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for unpaid rent or utilities;
- permission to retain the security deposit to offset the rent she is owed; and,
- to recover the filing fee from the Tenant for the cost of this application.

The Landlord and the Tenant both attended the hearing and provided testimony. The Tenant did not provide any evidence. The Tenant confirmed receipt of the Landlord's Notice of Hearing, prior to moving out of the rental unit. The Landlord stated she never served the Tenant with her evidence package, as the Tenant never gave her forwarding address.

Residential Tenancy Branch Rule of Procedure 3.14 and 3.15 requires that the applicant's evidence to be relied upon at a hearing must be received by the Residential Tenancy Branch and the **respondent** not less than 14 days before the hearing. Since the evidence was never given to the Tenant it will not be considered in this hearing. I will rely on oral testimony only.

I note the documentary evidence largely relates to the Landlord's claim for damage to the rental unit. During the hearing I explained that the Landlord did not apply for monetary compensation for damage or loss under the Act, nor did she file an amendment to have that matter included in this proceeding. I grant the Landlord leave to apply for compensation for damage or loss under the Act and for damage to the rental unit.

During the hearing, the Tenant confirmed her email address, and the Landlord confirmed they had the Tenant's email address. The Tenant stated she will not give her physical address to the Landlord because she does not want them to know where she lives.

Both parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to compensation for unpaid rent or utilities?
- Is the Landlord entitled to keep the security deposit to offset the unpaid rent?

Background and Evidence

Both parties confirmed that monthly rent was set at \$1,200.00 and was due on the first of the month. The parties also agreed that the Landlord still holds a security deposit in the amount of \$600.00. Both parties agreed that the tenancy ended at the end of November 2019, and the Tenant moved out around November 30, 2019.

The Landlord and the Tenant both agreed that the Tenant only paid \$600.00 in rent for November 2019. The Tenant stated she did this because of all the issues she was having with the Landlord but now realized she should have paid in full, and applied for remedies through our branch. The Landlord is seeking to recover the remaining rent owed for November in the amount of \$600.00.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim.

In this instance, the burden of proof is on the Landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenants. Once that has been established, the Landlords must then provide evidence that can verify the value of the loss or

damage. Finally it must be proven that the Landlord did everything possible to minimize the damage or losses that were incurred.

Section 26 of the *Act* confirms that a Tenant must pay rent when it is due unless the Tenant has a right under the *Act* to deduct all or a portion of rent (security deposit overpayment, emergency repairs paid for by the Tenant, illegal rent increases, or another Order by an Arbitrator).

With respect to the Landlord's request for a Monetary Order for unpaid rent, I find there is sufficient evidence to demonstrate that the Tenant owes and has failed to pay \$600.00 in rent from November 2019.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. As the Landlord was substantially successful with her application, I order the Tenant to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution. Also, I authorize the Landlord to retain the security deposit to offset the other money owed.

In summary, I find the Landlord is entitled to the following monetary order:

Item	Amount
Lost Rent	\$600.00
PLUS: Filing Fee	\$100.00
Subtotal:	\$700.00
LESS: Security and Pet Deposit	\$600.00
Total Amount	\$100.00

Conclusion

The Landlord is granted a monetary order in the amount of **\$100.00**, as specified above. This order must be served on the Tenant. If the Tenant fails to comply with this order the Landlord may file the order in the Provincial Court (Small Claims) and be 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 *Residential Tenancy Act*.

Dated: April 03, 2020

Residential Tenancy Branch