



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNRL-S, MNDCL-S, FFL

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution, filed on February 7, 2020, in which the Landlord sought an Order of Possession and monetary compensation based on a 10 Day Notice to End Tenancy For Unpaid Rent or Utilities issued on January 1, 2020 (the "Notice") authorization to retain the Tenant's security deposit, monetary compensation damage or loss under the *Residential Tenancy Act*, *Residential Tenancy Regulation* or tenancy agreement, and to recover the filing fee.

The hearing of the Landlord's Application was scheduled for teleconference 9:30 a.m. on April 17, 2020. Only the Landlord's agent, S.A. called into the teleconference hearing. The Landlord's Agent gave affirmed testimony and was provided the opportunity to present the Landlord's evidence orally and in written and documentary form, and to make submissions to me.

The Tenant did not call into this hearing, although I left the teleconference hearing connection open until 9:45 a.m. Additionally, I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Landlord's Agent and I were the only ones who had called into this teleconference.

As the Tenant did not call in, I considered service of the Landlord's hearing package. The Landlord's Agent testified that they served the Tenant with the Notice of Hearing and the Application on February 10, 2020 by registered mail. A copy of the registered mail tracking number is provided on the unpublished cover page of this my Decision.

Residential Tenancy Policy Guideline 12—Service Provisions provides that service cannot be avoided by refusing or failing to retrieve registered mail and reads in part as follows:

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

Pursuant to the above, and section 90 of the *Residential Tenancy Act*, documents served this way are deemed served five days later; accordingly, I find the Tenant was duly served as of February 15, 2020 and I proceeded with the hearing in their absence.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Rules of Procedure*. However, not all details of the Landlord's submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the Landlord's Agent and relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

The Landlord's Agent confirmed their email addresses during the hearing as well as their understanding that this Decision would be emailed to them.

At the outset of the hearing, the Landlord's Agent testified that the Tenant vacated the rental unit on March 2, 2020. As a result, the Landlord's request for an order of possession was withdrawn.

Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenant?
2. Is the Landlord entitled to retain the Tenant's security deposit?
3. Should the Landlord recover the filing fee?

Background and Evidence

A month to month tenancy agreement between the parties began on or about August 1, 2019 and ended on March 2, 2020 when the Tenant vacated the rental unit. Monthly rent in the amount \$1,700.00 was due on the first day of each month during the tenancy. The Tenant paid a \$850.00 security deposit at the start of the tenancy which the Landlord continues to hold.

The Tenant failed to pay rent for the month of January 2020. The Landlord issued the Notice on January 1, 2020 indicating the amount of \$1,700.00 was due as of January 1, 2020. The Notice was served by posting to the rental unit door on January 6, 2020. As documents served in this manner are deemed served three days later, the Tenant is deemed served as of January 9, 2020. The Notice has an effective vacancy date of January 17, 2020 which automatically corrects under the *Act* to January 19, 2020.

The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days of service, namely, January 14, 2020. The Notice also explains the Tenant had five days from the date of service to dispute the Notice by filing an Application for Dispute Resolution.

The Landlord's Agent testified that the Tenant did not pay the rent within the five days as prescribed by the *Act*, nor did the Tenant apply for dispute resolution.

The Landlord's Agent confirmed that the Tenant also failed to pay rent for February 2020 and March 2020. In the within hearing, the Landlord sought a Monetary Order in the amount of \$5,200.00 comprised of the following:

Unpaid rent for January 2020	\$1,700.00
Unpaid rent for February 2020	\$1,700.00
Unpaid rent for March 2020	\$1,700.00
Filing fee	\$100.00
TOTAL MONETARY CLAIM	\$5,200.00

The Landlord's Agent testified that due to the condition of the rental unit, the rental unit required cleaning and repair and has not been re-rented. The Application also indicated the Tenant failed to pay utilities as required by the tenancy agreement. Notably the Landlord did not submit any documentary evidence in support of this portion of their claim.

Analysis

Based on the documentary evidence, the undisputed testimony of the Landlord's Agent, and on the balance of probabilities, I find the following.

Pursuant to section 26 of the *Act*, a Tenant must pay rent when it is due in accordance with the tenancy agreement.

Based on the above, I find the Tenant breached section 26 of the *Act* by failing to pay \$1,700.00 in monthly rent for the months January, February and March 2020 as claimed by the Landlord. I therefore find the Landlord is entitled to monetary compensation for unpaid rent in the amount of \$5,100.00.

As the Landlord has been successful, I award the Landlord recovery of the \$100.00 filing fee for a total award of **\$5,200.00**.

I find this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit, such that I authorize the Landlord to retain the Tenant's **\$850.00** security deposit in partial satisfaction of the Landlord's monetary claim, and I grant the Landlord a monetary Order pursuant to section 67 of the *Act* for the balance owing by the Tenant to the Landlord in the amount of **\$4,350.00**. This Order must be served on the Tenant and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that court.

The Landlord is at liberty to reapply for monetary compensation for unpaid utilities, the cost or repairs and cleaning of the rental unit as well as loss of rent.

Conclusion

The Tenant vacated the rental unit such that the Landlord's application for an Order of Possession was no longer required.

The Landlord is entitled to monetary compensation in the amount of \$5,100.00 for unpaid rent. The Landlord is also entitled to recover the filing fee.

The Landlord is authorized to retain the Tenant's full security deposit of \$850.00 in partial satisfaction of the claim, and is granted a Monetary Order under section 67 for the balance due of **\$4,350.00**. This Order must be served on the Tenant and may be filed in the Provincial Court (Small Claims) and enforced as an Order of that court.

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: April 17, 2020

Residential Tenancy Branch