



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, FFL, FFT, MNSD

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.

This hearing also dealt with the tenant's cross-application pursuant to the *Act* for:

- authorization to obtain a return of all or a portion of their security deposit pursuant to section 38; and
- authorization to recover the filing fee for its application from the tenant, pursuant to section 72.

Both parties appeared at the hearing. The hearing process was explained, and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Issue to be Decided

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

Is the tenant entitled to a monetary award equivalent to double the value of his security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*?

Is either party entitled to recover the filing fee for their application from the other party?

Background, Evidence

The landlord's testimony is as follows. The tenancy began on November 1, 2016 and ended on November 10, 2019. The tenants were obligated to pay \$1435.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$700.00 security deposit. The landlord testified that the tenant called him on October 31, 2019 and advised that they would be moving out and were refusing to pay the rent for the month of November 2019. The landlord testified that the tenants were gone after the first week of November. The landlord testified that the tenants claimed that there was a mice infestation but since they have moved, he has not seen any mice. The landlord seeks the loss of rent for November 2019 and the recovery of the \$100.00 filing fee.

The tenant gave the following testimony. The tenant testified that the landlord knew about the mice problem since July 2019 and did nothing about it. The tenant testified that the landlord just ignored the problem. The tenant testified that since the landlord was not maintaining the property, he decided to end the tenancy and feels justified in doing so. The tenant seeks the return of double the deposit as fifteen days have passed since the tenancy ended and he has yet to receive the money.

Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of each party's claim and my findings around each are set out below.

Section 45 of the *Act* addresses the short notice issue before me as follows.

Tenant's notice

45 (3) If a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after **the tenant gives written notice of the failure**, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

In the tenant's own testimony, he stated that he phoned the landlord on October 31, 2019 and that he was terminating the tenancy "immediately". The tenant clearly did not give written notice of the alleged mice issue and did not give the landlord a reasonable amount of time to correct the issue, accordingly; I find that the tenant ended the tenancy without the proper notice required and therefore is responsible for the rent for the month of November 2019. The landlord is entitled to \$1435.00. The landlord is also entitled to the recovery of the \$100.00 filing fee for total award of \$1535.00.

The tenant was seeking the return of double the deposit. The tenant provided his forwarding address to the landlord on November 17, 2019 and the landlord filed an application on November 24, 2019. Section 38 of the Act addresses the deposit issue as follows:

Section 38 (1) says that 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, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

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

As the landlord filed their application within fifteen days of receiving the tenants forwarding address, the doubling provision is not applicable. Furthermore, as I have found that the landlord is entitled to a monetary award; applying the offsetting provision under section 72 of the Act, the landlord is entitled to retain the \$700.00 security deposit in partial satisfaction of the claim.

Conclusion

The tenant's application is dismissed in its entirety without leave to reapply.

The landlord has established a claim for \$1535.00. I order that the landlord retain the \$700.00 security deposit in partial satisfaction of the claim, and I grant the landlord an order under section 67 for the balance due of \$835.00. This order may be filed in the Small Claims Court 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 *Residential Tenancy Act*.

Dated: April 28, 2020

Residential Tenancy Branch