



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC MNR MNSD FF

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. The participatory hearing was held, by teleconference, on May 5, 2020. The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage to the unit, for damage or loss under the Act, and for unpaid rent; and,
- authorization to retain all or a portion of the Tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38.

Both parties attended the hearing and provided testimony. The Tenant did not submit any evidence. The Landlord stated that he served his application and Notice of Hearing by registered mail, which the Tenant confirmed getting. The Landlord stated he did not serve the Tenant with his evidence that he uploaded for my consideration. As stated in the hearing, each party is required to serve the other party with their evidence, in accordance with the Rules of Procedure, in order for that evidence to be admissible. As the Landlord did not serve his documentary evidence to the Tenant, it is not admissible. Both parties relied on oral testimony only for the hearing.

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.

The Landlord asked to withdraw his claim for damage or loss (cleaning expenses), and only wished to proceed with his claim for lost rent. I accept the withdrawal and hereby amend the Landlord's application accordingly.

Issues to be Decided

- Is the Landlord entitled to a monetary order for unpaid rent?
- Is the Landlord authorized to retain all or a portion of the Tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38?

Background and Evidence

No tenancy agreement was provided into evidence, but both parties agreed that monthly rent, in the amount of 2,100.00, was due on the 1st of the month and the tenancy was month-to-month in nature. Both parties also confirmed that the Landlord still holds a security deposit in the amount of \$1,050.00.

The Landlord stated that the Tenant gave very short notice that he would be vacating the rental unit. The Landlord stated that the Tenant asked on November 1, 2019, if he could pay rent on the 15th of the month due to financial hardship. The Landlord stated that a week later, around November 6, 2019, the Tenant said he would be moving out by mid-month. The Tenant confirmed that he moved out around November 14, 2019, and that he did not pay any rent for November 2019, despite living in the unit for half a month. The Tenant also did not refute that he gave notice in the manner described by the Landlord.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*.

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.

Section 45(1) of the *Act* requires a Tenant to end a month-to-month (periodic) tenancy by giving the Landlord notice to end the tenancy the day before the day in the month when rent is due. In this case, in order to avoid any responsibility for rent for November 2019, the Tenant would have needed to provide his notice to end this tenancy before

September 30, 2019. Section 52 of the *Act* requires that a Tenant provide this notice in writing.

In this case, the Tenant breached section 45(1) of the *Act* by giving such short notice. I note the Landlord was able to re-rent the unit for December, but the Tenant did not pay rent for November. I find the Tenant is liable for November rent, given his short notice, and the fact he lived there for half of the month. I find the Landlord would have had little, if any ability to mitigate the remaining rent for the second half of November. As such, the Tenant is responsible for all of November 2019 rent, \$2,100.00.

Further, 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 his application, I order the Tenant to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

Also, pursuant to sections 72 of the *Act*, I authorize that the security deposit, currently held by the Landlord, be kept and used to offset the amount owed by the Tenant. In summary, I grant the monetary order based on the following:

Claim	Amount
Rent	\$2,100.00
Filing fee	\$100.00
Less: Security Deposit currently held by Landlord	(\$1,050.00)
TOTAL:	\$1,150.00

Conclusion

The Landlord is granted a monetary order in the amount of **\$1,150.00**, 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: May 6, 2020

Residential Tenancy Branch