



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S FFL

Introduction

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

- a Monetary Order for damages and loss pursuant to section 67;
- authorization to retain the deposits for this tenancy pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, which lasted approximately 10 minutes. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The landlord testified that the landlord's application for dispute resolution dated January 12, 2020 and evidentiary materials were sent to the tenant at a forwarding address provided by the tenant, by registered mail on or about that date. The landlord provided a valid Canada Post tracking number as evidence of service. Based on the undisputed evidence, I find that the tenant is deemed served with the landlord's application for dispute resolution and evidence package in accordance with sections 88, 89 and 90 of the Act on January 17, 2020, five days after mailing.

At the outset of the hearing the landlord applied to amend the amount of their monetary claim explaining that since the application was filed they have received more accurate invoices of the arrears for this tenancy. Pursuant to section 64(3)(c) of the Act and Rule 4.2 of the Rules of Procedure as more accurate invoices becoming available is reasonably foreseeable I amend the landlord's Application to increase the landlord's monetary claim from \$1,905.00 to \$2,051.00.

Issue(s) to be Decided

Is the landlord entitled to a monetary award as claimed?
Is the landlord entitled to retain the deposits for this tenancy?
Is the landlord entitled to recover the filing fee from the tenant?

Background and Evidence

The landlord provided undisputed testimony regarding the following facts. This fixed-term tenancy began in September 2019. The monthly rent was \$2,300.00, payable on the first of each month. In addition, the tenant is responsible for paying a portion of the utilities for the rental building. A security deposit of \$1,150.00 and pet damage deposit of \$1,150.00 were collected and still held by the landlord.

The tenant gave the landlord notice to end the tenancy on December 2, 2019 and vacated the suite by December 31, 2019. The tenant did not pay rent for January 2020. The landlord mitigated their rental income losses by finding a new occupant to take possession of the suite starting January 15, 2020. The landlord seeks a monetary award in the equivalent of half a month's rent of \$1,150.00 for their rental income losses.

The landlord said that the total utility arrear for this tenancy is \$901.00. The landlord seeks a monetary award for that amount.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I accept the landlord's evidence that the tenant was obligated to pay a portion of the utilities under the terms of the tenancy. I accept that the tenant failed to pay the full amount and there is an arrear of \$901.00. Accordingly, I issue a monetary award in the landlord's favour in that amount.

I accept the evidence of the landlord that the tenant failed to provide sufficient notice to end the tenancy by giving notice on December 2, 2019 and vacating at the end of the month in violation of section 45(2) of the *Act*. I further accept that the landlord attempted to mitigate their rental income loss and was able to find a new occupant to take possession in January 2020. I accept that despite the reasonable steps taken by the landlord they still incurred losses of half a month's rent and issue a monetary award in the amount of \$1,150.00 accordingly.

As the landlord was successful in their application they are entitled to recover their filing fee from the tenant.

In accordance with sections 38 and the offsetting provisions of 72 of the *Act*, I allow the landlord to retain \$2,151.00 of the tenant's security and pet damage deposit in partial full satisfaction of the monetary award issued in the landlord's favour.

Conclusion

The landlord is authorized to retain \$2,151.00 of the security and pet damage deposit held for this tenancy.

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: June 5, 2020

Residential Tenancy Branch