



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S MNDCL-S FFL

Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (the Act) for a monetary order in the amount of \$2,900.00, which according to the application details is for loss of February 2020 rent, and damages to the rental unit, site or property, for authorization to retain all or part of the tenants' security deposit and pet damage deposit (combined deposits), and to recover the cost of the filing fee.

The landlord attended the teleconference hearing and gave affirmed testimony. During the hearing the landlord was given the opportunity to provide their evidence orally. A summary of the evidence is provided below and includes only that which is relevant to the hearing.

As the tenants did not attend the hearing, service of the Notice of a Dispute Resolution Proceeding dated January 30, 2020 (Notice of Hearing), application and documentary evidence were considered. Firstly, as the landlord testified that they did not serve tenant GKG, I have removed GKG from any responsive monetary order as I find that GKG was not served in accordance with the Act. The landlord testified that they personally served tenant MSM (tenant) outside of the rental unit on February 1, 2020 at approximately 6:00 p.m. and that the tenant accepted the package containing the Notice of Hearing, application and documentary evidence. Based on the above, and without any evidence before me to prove to the contrary, I find that the tenant was sufficiently served on February 1, 2020 with the Notice of Hearing, application and documentary evidence. Given that the tenant did not attend the hearing, I consider this matter to be undisputed by the tenant and the hearing continued without the tenant present in accordance with Rule 7.3 of the RTB Rules.

Preliminary and Procedural Matters

Firstly, and as mentioned above, tenant GKG will not be named in any responsive monetary order as I find tenant GKG was not served as required by the Act.

Secondly, although the landlord thought this hearing would also address damages to the unit, site or property, I find the details of dispute and the monetary claim submitted was not formally amended by the landlord and as a result, I will only allow the unpaid rent portion to be dealt with at this hearing as I find it would be prejudicial to the tenant to deal with damages when they were served with an application that only mentioned \$2,900 in loss of rent/unpaid rent for February 2020. As a result, I grant the landlord leave to reapply for damages to the unit, site or property under the Act. This decision does not extend any statutory deadlines under the Act. Based on the details of dispute I amend the landlord's application code to include unpaid rent and loss of rent pursuant to section 64(3)(c) of the Act as I find the details on the application are clearly articulated that the application was only for unpaid rent for February 2020 in the amount of \$2,900.00, to offset that amount with the combined deposits, plus the filing fee.

Thirdly, as the landlord confirmed their email address and the email address for tenant MSM but not tenant GKG, this decision will be sent by email to the landlord and tenant MSM and by regular mail to tenant GKG. If the landlord is entitled to a monetary order, it will be sent by email to the landlord for service on the tenant.

Issues to be Decided

- Is the landlord entitled to a monetary order under the Act, and if so, in what amount?
- What should happen to the tenants' security deposit and pet damage deposit under the Act?
- Is the landlord entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on March 1, 2019 and was scheduled to revert to a month to month tenancy after February 29, 2020. The monthly rent was \$2,900.00 during the tenancy and was due on the first day of each month. The landlord stated that the tenants paid a security deposit of \$1,500.00 and a pet damage deposit of \$500.00 at the start of the tenancy, which the landlord continues to hold.

The landlord stated that on January 25, 2020 the tenant texted the landlord that they would be vacating a few days later on February 1, 2020. The landlord confirmed that the tenants failed to provide one-month written notice as required by the Act.

The landlord is seeking loss of \$2,900.00 for February 2020 rent, plus the \$100.00 filing fee. The landlord has also requested to offset the money owed with the tenants' combined deposits which total \$2,000.00.

Analysis

Based on the undisputed documentary evidence and the undisputed testimony of the landlord provided during the hearing, and on the balance of probabilities, I find the following.

As the tenant was served with the Notice of Hearing, application and documentary evidence and did not attend the hearing, I consider this matter to be unopposed by the tenant. Section 26 of the Act applies and states:

Rules about payment and non-payment of rent

26(1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

[Emphasis added]

In addition, section 45(1) of the Act applies and states:

Tenant's notice

45(2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

[Emphasis added]

Based on the above, I find the tenants breached sections 26 and 45(2) of the Act by failing to pay rent of \$2,900.00 on February 1, 2020 and by failing to provide the proper one-month notice and that the one-month notice could not have been effective until end of March 2020 as the fixed-term tenancy did not revert to a month to month tenancy until February 29, 2020. As a result, I find the landlord's application is fully successful in the amount of **\$3,000.00**; comprised of \$2,900.00 in unpaid February 2020 rent, plus the \$100.00 filing fee, the latter of which is under section 72 of the Act.

Pursuant to section 38 of the Act, as the as the landlord continues to hold the tenants' combined deposits of \$2,000.00, which have not accrued any interest to date, I grant the landlord authorization to retain the tenants' full \$2,000.00 in combined deposits plus \$0.00 in interest, to offset the \$3,000.00 amount owing. 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 **\$1,000.00**.

I caution the tenants not to breach sections 26 and 45(2) of the Act in the future.

Conclusion

The landlord's application is fully successful.

The landlord has established a total monetary claim of \$3,000.00 as described above. The landlord has been authorized to retain the tenants' full combined deposits of \$2,000.00 including \$0.00 in interest in partial satisfaction of the landlord's monetary claim. The landlord has been granted a monetary order pursuant to section 67 of the Act, for the balance owing by the tenants to the landlord in the amount of \$1,000.00. The landlord must serve the tenant with the monetary order and may enforce the monetary order in the Provincial Court (Small Claims Division).

The tenants have been cautioned as described above.

This decision will be sent by regular mail to tenant GKG and my email to the landlord and tenant MSM. The monetary order will be sent by email to the landlord only for service on tenant MSM.

The landlord is granted leave to reapply for damages to the unit, site or property.

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: June 19, 2020

Residential Tenancy Branch