



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Skyline Living
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL-S, FFL

Introduction

This hearing was scheduled to deal with the landlord's application for a Monetary Order for unpaid rent and parking; and, authorization to retain the tenant's security deposit and pet damage deposit. The landlord's agent appeared at the hearing; however, there was no appearance on part of the tenant.

Since the tenant did not appear, I explored service of the proceeding package upon the tenant. The landlord's agent submitted that the proceeding package and evidence was sent to the tenant at his forwarding address, via registered mail on April 21, 2020. The landlord's agent pointed to the move-out inspection report that was signed by the tenant on March 30, 2020 in support of receiving the tenant's forwarding address. The landlord provided the Canada Post tracking information showing registered mail sent on April 21, 2020 and eventually delivered by Canada Post on May 1, 2020, although the tracking information also indicates there were issues with the recipient's address (registered mail tracking number provided on the cover page of this decision). The landlord had not provided a photograph of the registered mail envelope addressed to the tenant; however, the landlord's agent testified that it would have been addressed to the forwarding address provided by the tenant, as reflected on the move-out inspection report, and the registered mail was not returned to the landlord.

The landlord's agent also testified that they had recently received email communication from the tenant indicating he was willing to authorize the landlord to retain his security and pet damage deposit in satisfaction of the unpaid rent. The landlord's agent stated the landlord was willing to accept the deposits in full satisfaction of all its claims against the tenant.

In light of the above, I was reasonably satisfied the tenant was served with the proceeding package and evidence, although I was not free of doubt given the registered

mail tracking information. Given the landlord's testimony that the tenant was agreeable to the landlord retaining his deposits and the landlord's willingness to limit its claims to an amount equivalent to the tenant's deposits, I was of the view the tenant was not prejudiced in proceeding with this claim, as reduced to the amount of the deposits. Accordingly, I proceeded to consider the landlord's request to retain the tenant's security and pet damage deposit.

Issue(s) to be Decided

Has the landlord established that it suffered loss of rent and/or parking that total or exceed the sum of the tenant's security deposit and pet damage deposit? If so, is the landlord authorized to retain the tenant's deposits?

Background and Evidence

The parties entered into a one year fixed term tenancy agreement starting on April 1, 2019 and set to expire on March 31, 2020. The tenant paid a security deposit and a pet damage deposit totalling \$1390.00. The tenant was required to pay rent of \$1390.00 and parking of \$50.00 to the landlord on the first day of every month. The parties executed a Mutual Agreement to End a Tenancy on December 23, 2019 with a stated effective date of March 31, 2020.

The landlord submitted that the tenant withheld rent and parking that was payable on March 1, 2020 in the sum of \$1440.00. The landlord tried working with the tenant and then the eviction ban was brought into law due to the COVID-19 pandemic so a 10 Day Notice to End Tenancy for Unpaid Rent was not issued. The tenant returned possession of the rental unit to the landlord and participated in the move-out inspection on March 30, 2020.

The landlord submitted that it has suffered a losses with respect to rent and parking in the sum of \$1440.00 for the month of March 2020, plus the filing fee paid for this Application for Dispute Resolution; but the landlord is limiting its claims against the tenant to the sum of his deposits, or \$1390.00.

Documentary evidence provided included copies of: the tenancy agreement; the Mutual Agreement to End a Tenancy; the move-in and move-out inspection reports; and, the tenant's ledger.

Analysis

Under section 26 of the Act, a tenant is required to pay rent when due in accordance with their tenancy agreement, even if the landlord has violated the Act, regulations or tenancy agreement, unless the tenant has a legal right to withhold rent.

I accept the unopposed evidence before me that the tenant was required to pay rent of \$1390.00 and parking of \$50.00 on the first day of every month starting April 1, 2019 and continuing until March 31, 2020. I further accept the evidence before me that the tenant failed to pay these amounts to the landlord when due on March 1, 2020. There is no evidence before me to suggest the tenant had a lawful right to withhold rent that was due for March 2020. Therefore, I find the landlord entitled to recover unpaid rent and parking from the tenant in the sum of \$1440.00. However, the landlord has limited its claims to \$1390.00 and I award that amount to the landlord.

I authorize the landlord to retain the tenant's security deposit in partial satisfaction of the amount awarded to the landlord above. A pet damage deposit may not be used for amounts other than those related to pet damage and I find the tenant entitled to return of his pet damage deposit but instead of issuing a Monetary Order to the landlord for the balance of unpaid rent and a Monetary Order to the tenant for the pet damage deposit, pursuant to the authority afforded me under section 72 of the Act, I offset to the two amounts and authorize the landlord to retain the tenant's pet damage deposit in offset of the unpaid rent and do not issue a Monetary awards and do not issue a Monetary Order to either party.

Conclusion

The landlord is authorized to retain the tenant's security deposit and pet damage deposit in total satisfaction of the losses claimed against the tenant.

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: August 19, 2020

Residential Tenancy Branch