



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, MNDCL-S, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Landlord under the Residential Tenancy Act, (the “*Act*”), for a monetary order for unpaid rent or utilities, for a monetary order for damages, permission to retain the security deposit and an order to recover the cost of filing the application. The matter was set for a conference call.

The Landlord attended the hearing and was affirmed to be truthful in their testimony. As the Tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing documentation was considered. Section 59 of the *Act* and the Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Landlord testified that the documents were sent by Canada Post registered mail, sent on April 24, 2020, a Canada Post tracking number was provided as evidence of service. Section 90 of the *Act* determines that documents served in this manner are deemed to have been served five days later. I find that the Tenant had been duly served in accordance with the *Act*.

The Landlord was provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

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.

Issues to be Decided

- Is the Landlord entitled to monetary order for unpaid rent and utilities?
- Is the Landlord entitled to monetary order for damage?
- Is the Landlord entitled to retain the security deposit for this tenancy?
- Is the Landlord entitled to recover the filing fee for this application?

Background and Evidence

The Landlord testified that the tenancy began on January 1, 2010, as an assignment of a previous tenancy, for a three-month fix term ending March 31, 2020. Rent in the amount of \$1,440.00 was to be paid by the first day of each month, and the Landlord had been given a \$695.00 security deposit and a \$695.00 pet damage deposit at the outset of the tenancy. The Landlord testified that the Tenant moved out of the rental unit, in accordance with the tenancy agreement, on March 31, 2020. The Landlord provided a copy of the tenancy agreement and the tenancy assignment agreement into documentary evidence.

The Landlord testified that the payment for the rent for this tenancy was set up as an automatic payment, and that when the Landlord attempted to take the March rent payment on March 1, 2020, it was returned insufficient funds and that the bank charged them a returned item fee of \$25.00. The Landlord provided a copy of the tenancy ledger into documentary evidence.

The Landlord is requesting \$1,440.00 in unpaid rent for March 2020, and the recovery of their \$25.00 bank charge for the Tenant's returned payment.

Analysis

Based on the evidence before me, the testimony of these parties, and on a balance of probabilities that:

Section 26(1) of the *Act* states that a tenant must pay the rent when it is due under the tenancy agreement.

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.*

(2) *A landlord must provide a tenant with a receipt for rent paid in cash.*

(3) *Whether or not a tenant pays rent in accordance with the tenancy agreement, a landlord must not*

(a) seize any personal property of the tenant, or

(b) prevent or interfere with the tenant's access to the tenant's personal property.

(4) *Subsection (3) (a) does not apply if*

(a) the landlord has a court order authorizing the action, or

(b) the tenant has abandoned the rental unit and the landlord complies with the regulations.

In this case, I accept the Landlord's testimony of these parties that the March 2020 rent check was returned insufficient funds, on March 10, 2020, and that they were charged a \$25.00 returned item fee by their bank. I find that the Tenant breached section 26 of the *Act* when they did not pay the rent as required under the tenancy agreement.

Therefore, I find that the Landlord has established an entitlement to a monetary award in the amount of \$1,565.00, comprised of \$1,440.00 in rent for March 2020, and \$25.00 in the recovery of their bank fees. I grant the Landlord permission to retain the \$695.00 security deposit and \$695.00 pet damage deposit that they are holding for this tenancy, in partial satisfaction of this award.

Additionally, section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord has been successful in their application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this hearing.

I grant the Landlords a monetary order of \$175.00, consisting of \$1,440.00 in rent, \$25.00 in bank fees, \$100.00 the recovery of the filing fee, less the \$695.00 security deposit and the \$695.00 pet damage deposit.

Conclusion

I find for the Landlord under sections 26, 65 and 72 of the Act. I grant the Landlord a **Monetary Order** in the amount of **\$175.00**. The Landlord is provided with this Order in the above terms, and the Tenant must be served with this Order as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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: August 21, 2020

Residential Tenancy Branch