



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") for:

- a monetary order for unpaid rent, pursuant to section 67;
- authorization to retain the tenant's security deposit, pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord's agent ("landlord") and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that he was the property manager for the landlord owner named in this application and that he had permission to speak on the owner's behalf. This hearing lasted approximately 18 minutes.

The tenant confirmed receipt of the landlord's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was duly served with the landlord's application. The tenant confirmed that she did not submit any evidence for this hearing.

The tenant stated that she received the landlord's application by email on the week before this hearing. She confirmed that she was ready to proceed with this hearing despite the late receipt of the application. I proceeded with the hearing as both parties consented that they were ready to proceed.

Issues to be Decided

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to retain the tenant's security deposit?

Is the landlord entitled to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the landlord's documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on May 15, 2019 and ended on February 1, 2020. Monthly rent in the amount of \$2,125.00 was payable on the first day of each month. A security deposit of \$1,062.50 was paid by the tenant and the landlord continues to retain this deposit. A written tenancy agreement was signed by both parties.

The landlord seeks a monetary order of \$4,250.00 for unpaid rent plus the \$100.00 application filing fee, from the tenant. Both parties agreed that the tenant failed to pay rent of \$2,125.00 to the landlord for each month from December 2019 to January 2020, totalling \$4,250.00.

The tenant said that she was given a monetary order of \$1,220.00 for emergency repairs at a previous RTB hearing and that she settled to move out on February 1, 2020 at another previous RTB hearing. A copy of both previous decisions was provided for this hearing. She claimed that she had to move out in ten days, and she did not know she had to pay rent to the landlord for the above two months, as she had to pay rent and a security deposit to a new landlord for a new rental unit. The tenant agreed that neither of the previous two RTB hearings addressed the issue of unpaid rent.

Analysis

Section 26 of the *Act* requires the tenant to pay monthly rent to the landlord on the date indicated in the tenancy agreement, which in this case, is on the first day of each month. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Residential Tenancy Regulation* or tenancy agreement must compensate a landlord for damage or loss that results from that failure to comply.

Both parties agreed that the tenant failed to pay rent of \$2,125.00 to the landlord for each month from December 2019 to January 2020, totalling \$4,250.00. Accordingly, I find that the landlord is entitled to rental arrears of \$4,250.00 from the tenant.

I note that the two previous RTB hearing decisions, the file numbers of which appear on the front page of this decision, do not involve any orders regarding unpaid rent for December 2019 or January 2020. The first decision, dated January 23, 2020, is a settlement for the tenant to move out, allowing both parties to make future monetary applications. The second decision, dated March 11, 2020, involves a monetary order of \$1,220.00 issued to the tenant for emergency repairs. No orders were made at either of the previous RTB hearings allowing the tenant to deduct any amounts from rent or to not pay rent to the landlord. Therefore, I find that the tenant is still liable to pay for rent to the landlord.

The landlord continues to hold the tenant's security deposit of \$1,062.50. Over the period of this tenancy, no interest is payable on the security deposit. The landlord applied to retain the security deposit and in accordance with the offsetting provisions of section 72 of the *Act*, I order the landlord to retain the tenant's entire security deposit of \$1,062.50 in partial satisfaction of the monetary award.

As the landlord was successful in this application, I find that he is entitled to recover the \$100.00 filing fee from the tenant.

Conclusion

I order the landlord to retain the tenant's entire security deposit of \$1,062.50 in partial satisfaction of the monetary award.

I issue a monetary order in the landlord's favour in the amount of \$3,287.50 against the tenant. 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 06, 2020

Residential Tenancy Branch